

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Christina Marie Roetering and Kevin  
Michael Roetering,  
  
Debtors.

Court File No. BKY-04-43760 RJK  
  
Chapter 7 Case

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**NOTICE OF HEARING & VERIFIED MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY**

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TO: The Debtors and other entities specified in Fed. R. Bankr. P. 4001(a)(1) and Local Rule 9013-3.

1. Beneficial Loan & Thrift Co. ("BLTC"), by and through its undersigned attorneys, gives notice of hearing and moves the court for relief from the automatic stay.

2. The Court will hold a hearing on this Motion at at 2:00 p.m., on October 28, 2004, before the Honorable Robert J. Kressel, U.S. Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota 55415. THE HEARING ON THIS MOTION MAY BE CONTINUED BY THE COURT, AT THE HEARING, WITHOUT FURTHER NOTICE TO ANY PARTY.

3. Pursuant to Local Rule 9006-1(b), any response to the relief requested herein must be filed and delivered not later than October 25, 2004, which is three (3) days (excluding Saturdays, Sundays and holidays) before the time set for the hearing or filed and served by mail not later than October 19, 2004 which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE REQUESTED RELIEF WITHOUT A HEARING.**

4. This is a core proceeding. The Petition commencing this case was filed on July 7, 2004. This case is now pending before this Court.

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157, and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1.

6. This Motion for Relief from Stay arises under 11 U.S.C. § 362 and Bankruptcy Rule 4001. This Motion is filed pursuant to Bankruptcy Rule 9014 and Local Rule 9013-1 through 9013-3. Movant BLTC requests relief from the automatic stay of 11 U.S.C. § 362 with respect to the real property as described in Exhibit A that is subjected to a perfected security interest in favor of Movant BLTC as shown by the terms of its Mortgage.

7. That Christina Marie Roetering and Kevin Michael Roetering, (“the Debtors”) entered into a Residential Mortgage (the “Mortgage”) with Movant BLTC to secure payment of a Loan Repayment and Security Agreement (the “Note”) dated November 16, 1993. A copy of the Mortgage is attached hereto and incorporated herein as **Exhibit A**. The Mortgage was recorded with the Office of the Registrar of Titles of Hennepin County, Minnesota, as Document No. 2461484 on January 3, 1994.<sup>1</sup>

8. Pursuant to the specific terms and conditions of the Note and Mortgage, the Debtors agreed to make certain monthly payments to Movant BLTC.

9. That an Event of Default has occurred under the terms of the Note and Mortgage in that, among other things, the Debtors have failed to make the payments required under the Note and Mortgage.

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<sup>1</sup> The Movant notes that during a previous foreclosure by advertisement in 2003, the Movant obtained an Order from Hennepin County District Court (**Exhibit B**) correcting an inadvertent satisfaction of mortgage certificate which had been recorded. The Court held that the satisfaction was filed in error and as a result was void and of no effect. The Debtor's property remained subject to the Movant's mortgage.

10. That pursuant to the provisions of 11 U.S.C. § 362(d)(1)(a), Movant BLTC alleges that "Cause" exists for relief from the automatic stay inasmuch as:

(i) The Payments due under the Note and Mortgage are in default from April 23, 2004 to date in the amount of \$862.01 per month, plus accrued interest, late charges, inspection fees and other costs of collection; and

(ii) That as of the date of filing of the Petition, the payoff balance due and owing under said Note and Mortgage was approximately \$155,284.72 plus additional interest, late charges, and other costs of collection.

11. Movant BLTC's interest in the Property is not adequately protected. Hennepin County estimates that the estimated market value of the property is \$200,700, which would be subject to Movant BLTC's Mortgage. Movant BLTC has not had the opportunity to inspect the Property recently and does not know whether the Property is currently insured and, if so, for how much. However, Movant BLTC believes that the value of the Property is rapidly depreciating and will be worth substantially less based on the Debtors' continuing lack of upkeep stemming from the Debtors' current financial condition. Movant BLTC's interest in the Property is not adequately protected. Moreover, the Debtors have not made any payments to Movant BLTC since April 23, 2004. A continuing default by the Debtors will impair BLTC's interest without adequate protection or just compensation.

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. § 362(a) to allow Movant BLTC to pursue its remedies under applicable state law.

WHEREFORE, BLTC, by its undersigned attorneys, moves the Court for an Order lifting the automatic stay under 11 U.S.C. § 362(a) to allow Movant BLTC to enforce its rights and remedies under the Note and Mortgage outlined herein and for such other relief as may be just and equitable.

RIDER BENNETT, LLP

By /e/ Gregory M. Erickson, Esq.  
Gregory M. Erickson (276522)  
Amy M. Moore (302946)  
Attorneys for Beneficial Loan & Thrift Co.  
333 South Seventh Street, Suite 2000  
Minneapolis, Minnesota 55402  
(612) 340 – 8900

DATED: October 1, 2004

**VERIFICATION**

I, Patricia D. Ottolino, Foreclosure Specialist for Beneficial Loan & Thrift Co., declare under penalty of perjury that the foregoing Notice of Hearing & Verified Motion for Relief from the Automatic Stay is true and correct according to the best of my knowledge, information and belief.

Dated: \_\_\_\_\_, 2004

BENEFICIAL LOAN & THRIFT Co.

By: \_\_\_\_\_  
Patricia D. Ottolino

Its: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_ 2004.

\_\_\_\_\_  
Notary Public

### VERIFICATION

I, Patricia D. Ottolino, Foreclosure Specialist for Beneficial Loan & Thrift Co., declare under penalty of perjury that the foregoing Notice of Hearing & Verified Motion for Relief from the Automatic Stay is true and correct according to the best of my knowledge, information and belief.

Dated: 9/30/, 2004

BENEFICIAL LOAN & THRIFT Co.

By: Patricia Ottolino  
Patricia D. Ottolino

Its: Foreclosure Specialist

Subscribed this 30th day and Sept day sworn to before me 2004 2004.

Louis K. Ferrante  
Notary Public



Received: 8/21/03 7:41AM;

612 379 7447 -&gt; C I TITLE INC; Page 3

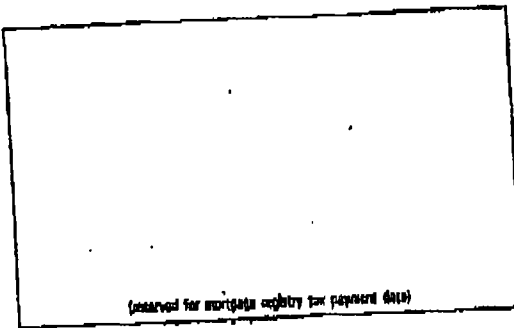
08/21/2003

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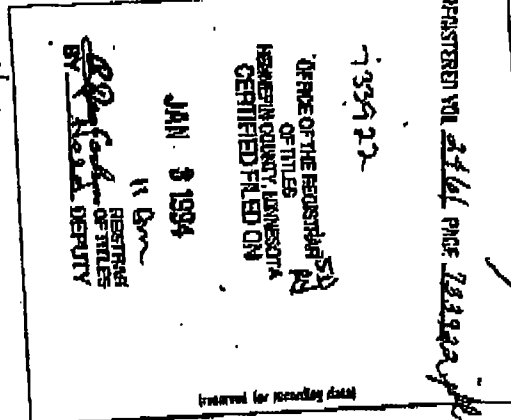
CI TITLE -&gt; O&amp;E

NO.080 0003

2461484



MORTGAGE REGISTRY TAX DUE HEREON:



(Reserved for recording date)

## MORTGAGE

This is a Mortgage on real property given on NOVEMBER 16, 1993, by KEVIN W. BORTENING and CHRISTINA M. BORTENING-HUBBARD AND WIFE to BENEFICIAL LOAN & THRIFT CO. to secure a Credit Line Account according to the terms of the Credit Line Account Agreement ("Agreement") described below. The real property (hereafter called Property) covered by this Mortgage is located in the County of HENNEPIN, State of Minnesota.

## EXPLANATION OF WORDS USED IN THIS DOCUMENT:

- (A) MORTGAGE - This document is called the Mortgage.  
 (B) YOU and YOUR - These words refer to each and all of those who sign this Mortgage.  
 (C) WE, OUR and US - These words refer to BENEFICIAL LOAN & THRIFT CO., a Minnesota corporation having a place of business at ST. PAUL, MINNESOTA 55101.  
 (D) AGREEMENT - This refers to a separate document you signed this day by which you acknowledge that you have opened a Credit Line Account under which we are obligated to make loan advances, including the Initial Advance, up to the Credit Line of \$ 91,000.00. If your Account is an Adjustable Rate Account, the Finance Charge rate will be adjusted.

GIVING OF MORTGAGE AND ITS EFFECT: On this date, you mortgage to us the Property described below to provide security for the Agreement. By mortgaging this Property to us, you mean:

1. You give us the right in the Property which the law gives to holders of mortgages;
2. You agree to keep all the promises you make in the Agreement and in this Mortgage; and
3. You give us a power of sale which will permit us to sell the Property if you fail to keep the promise to pay the scheduled Minimum Payment on the Account each month before the next billing date.

If you fail to pay the money you owe us or to keep the other promises made in the Agreement and in this Mortgage, the effect of mortgaging your Property is to permit us to exercise the power of sale you have given us and foreclose by a advertisement, cutting off your rights in the Property and causing a sale of the Property. A buyer of the sale will have the right to remove you from the Property. The proceeds of the sale of the Property may be applied to pay the cost and expenses of the foreclosure action, as well as to pay the money you owe us under the Agreement and this Mortgage. If the proceeds of sale are not enough to pay these amounts, then we may obtain a judgment against you for the difference.

PROPERTY UNDER MORTGAGE: The Property you mortgage has a legal description, as follows:

LOT 4, BLOCK 1, MAPLE MEADOWS 10TH ADDITION

MTG REG TAX PAID  
DEPT OF PROPERTY TAX & PUBLIC RECORDS

DEC 4 1993

HENNEPIN COUNTY MINN.  
BY V. GLEASON, DEPUTY

000014518 \*\*\* PAID \$209.30

☐ If this box is checked, this Mortgage is subject to a prior mortgage dated \_\_\_\_\_, 19\_\_\_\_, with \_\_\_\_\_ as mortgagee. That prior mortgage secures payment of a note in the principal amount of \$ \_\_\_\_\_ and was recorded on \_\_\_\_\_ of Mortgages at page \_\_\_\_\_ with the Recorder of the County of \_\_\_\_\_, Minnesota in Book \_\_\_\_\_ of Mortgages at page \_\_\_\_\_.

The Property also includes all your rights in the Property and your rights and privileges, if any, to all land, water, streets and roads next to and on all sides of the Property.

The Property also includes anything which is now attached to or used in connection with the Property or which will be attached or used in the future.

This Property also includes any proceeds, to the extent necessary to repay the amount that you owe us, which result from the taking of all or any part of the Property by a government agency or by anyone else authorized by law.

OR The Property is "improved" because a dwelling has been built on the Property.

PROMISE TO PAY AGREEMENT: You promise to pay us all the amounts you are required to pay by the Agreement. If you fail to pay these amounts on time, you will be in default.

INSURANCE: For our benefit, you will keep all buildings on the Property insured. These buildings will be insured against loss by fire, flood if the Property is located in an area having special flood hazards, as well as any other hazard against which we desire protection. This insurance protection will be issued by an insurance company acceptable to us. At our request, you will deliver and assign to us the insurance policy providing this protection. If you fail to pay the premium for this insurance or if you fail to obtain special hazard insurance within ten (10) days after we ask you, we may do so. You agree to then repay the premium when we ask for repayment or we may charge these amounts to the account and they will be secured by this Mortgage.

PRESERVING PROPERTY: You will keep the Property in good repair. You will not damage, destroy or substantially change the Property and you will not allow the Property to deteriorate. If any item attached to the Property and covered by this Mortgage is removed or damaged by attempted removal, you will replace it immediately.

RIGHT TO INSPECT THE PROPERTY We have the right to enter and inspect the Property on reasonable notice and at any reasonable time.

EXHIBIT

Tables

Received: 8/21/03 7:41AM;

B12 379 7447 -&gt; C I TITLE INC; Page 4

08/21/2003 08:19 CI TITLE -&gt; O&amp;E

NO.080 0004

**PAYMENT OF TAXES AND OTHER MORTGAGES:** You will pay when due all other mortgages, all taxes, assessments, sewer rents and water rates which are levied against the Property. You will show us receipts for payment of all these charges against the Property within ten (10) days after we make a request for them. If you do not pay all taxes, assessments, sewer rents, water rates, insurance premiums, costs to protect the value of the Property, maintenance charges and any other payments you are required to make, we may pay those charges, although we do not have to. If we do pay them, you will repay us promptly at our request with interest at the rate provided in the Agreement and the total amount we paid will be added to the unpaid balance of the amount you owe us and this amount will be secured by this Mortgage.

**OUR RIGHT TO DEMAND PAYMENT OF ENTIRE BALANCE DUE:** We, at our option, may demand that the entire unpaid balance of the Account, plus unpaid interest to the date of payment, be paid in full immediately if you fail to keep any of the promises you make in the Agreement and this Mortgage or if you should die.

**OWNERSHIP OF PROPERTY:** You represent and warrant that you own the Property covered by this Mortgage free and clear of any rights of anyone else except that lender whose name appears on the front. You will defend our ownership and our rights under this Mortgage against any claims made against the Property. You will not sell or create a lien or charge on the Property without our prior written approval. Any action to sell or create a lien or charge without such approval shall be void.

**PRIOR MORTGAGES:** You shall pay and keep current the monthly installments on any prior mortgage and shall prevent any default of the prior mortgage. Should any default be made in the payment of any installment of principal or any interest on the prior mortgage, or should any suit be filed to foreclose the prior mortgage, you agree the amount secured by this Mortgage shall be due and payable in full at any time. At our option, we may pay the scheduled monthly installments on the prior mortgage and, up to the amount we pay, we may become subrogated to the rights of the mortgagee on the prior mortgage. All payments we make on the prior mortgage shall bear interest at the Daily Periodic Rate in effect on the Unpaid Balance. Any amounts paid may be added to the Unpaid Balance on the Account and will be secured by this Mortgage.

**NOTICE OF INTENT TO FORECLOSE:** Prior to foreclosure, we shall mail to you a Notice of Intent to Foreclose. This Notice, which must set a date by which you may cure the default that is at least 30 days from the date of the Notice, will provide you with certain items of information, as follows:

- (a) Notice of your default.
- (b) The action you must take to cure the default.
- (c) Your failure to cure the default may result in our accelerating the loan and selling the Property.
- (d) Your right to reinstate this Mortgage after we have accelerated the loan.
- (e) Your right to bring a court action to prove that you are not in default on your loan.
- (f) Your right to use in that court action any defense available to you in order to prevent acceleration and sale of the Property.

**NOTICES:** All Notices which we send to you, including the Notice of Intent to Foreclose, shall be sent by Certified Mail addressed to you at the Property address or any address that you tell us in writing is the address of which you wish to receive your mail. If you wish to send us a Notice, you shall send it to us Certified Mail, Return Receipt Requested, at our office address listed on the front of this Mortgage or any other address to which we may direct you to send it to us at a later date.

**COPIES OF FORMS:** You shall receive from us a copy of the Agreement and a copy of this Mortgage. These copies will have been "certified" by your making these copies an exact duplicate of the original Agreement and original Mortgage. We will deliver this copy of the Mortgage to you within a reasonable time after it is recorded.

**SALE OF PROPERTY:** If you sell the Property voluntarily without obtaining our consent, we may demand the unpaid principal balance of the loan plus interest on that balance that is due and unpaid at once due and payable. We will not exercise our right to make that declaration if (1) we allow the sale of the Property because the purchaser's creditworthiness is satisfactory and (2) the purchaser, prior to sale, signed a written assumption agreement which contains terms we fix including, if we require, an increase in the rate of interest payable under the Agreement.

**ENFORCEMENT OF OUR RIGHTS:** If we do not exercise or enforce any of our rights under this Mortgage, the Agreement or under the law, we still will have all of those rights and we may exercise and enforce them in the future. Each of our rights under the Agreement and this Mortgage is separate. We may exercise and enforce one or more of those rights as well as any of our rights under the law one at a time or all at once.

**SIGNATURES:** You have signed and sealed this Mortgage on the date shown on the front in the presence of the witnesses.

Witness

Witness

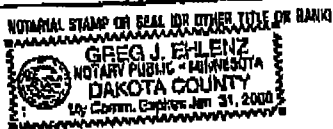
STATE OF MINNESOTA

SE:

COUNTY OF RANNEY

10 99

The foregoing instrument was acknowledged before me this 16TH day of NOVEMBER by KEVIN M. ROETERING AND CHRISTINA M. ROETERING-HUSBAND AND WIFE



SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

THIS INSTRUMENT WAS DRAFTED BY

Beneficial Loan &amp; Thrift Co.

385 NORTH ROBERT STREET  
ST. PAUL, MINNESOTA 55101

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

01/24/27 4:51:15  
HENN. CO. DISTRICT  
COURT ADMINISTRATOR

CASE TYPE: REPLEVIN  
DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Beneficial Loan & Thrift Co., a Minnesota  
corporation,

Plaintiff,

vs.

The State of Minnesota, Kevin M. Roetering,  
Christina M. Roetering, Paul C. Edgett, Alarm  
Products Distributors, Inc., a Minnesota  
corporation, ABC, Inc., DEF, LLC, HIJ, LLP,  
John Doe and Mary Roe,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER FOR  
JUDGMENT**

Court File No.: 03-17734

The above-titled case was heard by the Court on the 18<sup>th</sup> day of December 2003, upon the motion of Beneficial Loan & Thrift Co. ("Beneficial") for an order against The State of Minnesota, Kevin M. Roetering, Christina M. Roetering, Paul C. Edgett, Alarm Products Distributors, Inc., a Minnesota corporation, ABC, Inc., DEF, LLC, HIJ, LLP, John Doe and Mary Roe, ("Defendants") and in favor of Beneficial as follows:

1. With respect to the allegations contained in Count One of Beneficial's Complaint, Beneficial requested a money judgment against Kevin M. Roetering and Christina M. Roetering in the amount of \$143,357.14, plus interest accruing at the rate of \$32.59 per day, plus applicable attorney's fees, costs, and applicable interest.

2. With respect to the allegations contained in Count Two of Beneficial's Complaint, Beneficial requested that the Property subject to Beneficial's Mortgage be sold by the Hennepin





County Sheriff in the manner provided by the applicable Minnesota Statutes and that the proceeds of said sale be applied first to the payment of costs and disbursements of said sale and that if no redemption is made therefrom within the period fixed by statute, that Beneficial be decreed the absolute owner of the premises purchased at said sale as adjudged by this Court.

3. With respect to the allegations contained in Count Three of Beneficial's Complaint, Beneficial requested an order directing that Beneficial's Mortgage is prior, paramount, and superior to all other interest or liens against the Property, and barring and foreclosing all Defendants from any equity of redemption, equity lien, or interest in the Property subject to Beneficial's Mortgage, except to the right to redeem from said foreclosure sale as provided by statute. Plaintiff requested that this Court bar and foreclose each and every Defendant and all persons, known and unknown, not named as Defendants herein, from any equity of redemption or interest in the Property other than the right to redeem as provided by statute. In addition, Beneficial requested an order directing and adjudging that the Satisfaction filed as Document No. 3649325 on December 4, 2002 is void and of no effect based on the doctrine of failure to consideration, and mistake, unjust enrichment, or other equitable principles.

Gregory M. Erickson, Esq., of Rider Bennett, LLP, appeared in support of the Motion.

#### **FINDINGS OF FACT**

4. On or about November 16, 1993, Kevin M. Roetering and Christina M. Roetering, (hereafter "Borrowers") executed a Note and Mortgage in the principal amount of Ninety-One Thousand and 00/100 Dollars (\$91,000.00) (hereafter "Note and Mortgage"). In exchange for these funds, Borrowers received cash which facilitated the purchase of the following real Property in Hennepin County, Minnesota which is legally described as:

Lot 4, Block 1, Maple Meadows Tenth Edition

(hereafter the "Property").

5. The Mortgage was recorded in Hennepin County at the Registrar of Titles office as Document No. 2461484, on January 3, 1994. Since the execution of the Note and Mortgage, Borrowers have consistently been in default under the terms and conditions of the Mortgage. Borrowers' various defaults include, without limitation, allowing for state tax liens to be recorded against the Property, allowing numerous judgments to be entered against Borrowers and recorded against the Property, and numerous payment defaults throughout the history of the Note and Mortgage.

6. At no time during the history of the Mortgage did Beneficial offer to release the Borrowers from their payment obligations under the Note and Mortgage. On or about March 27, 2003 Beneficial, through its undersigned counsel, sent Borrowers a demand letter requesting payment in full of the entire balance of the Note and Mortgage plus applicable interest and penalties. A copy of this demand letter is attached to Plaintiff's Complaint as Exhibit A. After the expiration of the cure period contained in the demand letter, Beneficial began proceedings to commence a foreclosure by advertisement of the amounts due and owing under the Note.

7. During one of the preliminary steps to beginning a foreclosure by advertisement, (i.e., the ordering of an Owners and Encumbrances Report), the Owners and Encumbrances Report for the Property stated that the Mortgage had been satisfied pursuant to a Satisfaction of Mortgage filed at the Registrar of Titles as Document No. 3649325 on December 4, 2002 (hereafter the "Satisfaction"). By a cursory view of the Satisfaction, it is clearly evident that the Satisfaction was filed in error. The Satisfaction lists as mortgagors of the recorded Satisfaction completely different parties from the Borrowers, Joseph A. Rehak and Marian J. Rehak, which are two completely different mortgagors (hereafter the "Rehaks"). The Satisfaction also directs the Recorder to mail the Satisfaction to the Rehaks who are complete strangers to the transaction.

Apparently, because of an administrative mistake, the Rehaks' Satisfaction was filed in the Borrowers chain of title. This Satisfaction was not supported by any consideration whatsoever. A copy of the Satisfaction is attached to the Complaint as Exhibit B.

8. Plaintiff's claims for a specific default money judgment were denied without prejudice because of insufficient record evidence to support Plaintiff's claim with requisite specifications.

### **CONCLUSIONS OF LAW**

1. With respect to the allegations contained in Count Three of Beneficial's Complaint, Beneficial's Mortgage is prior, paramount, and superior to all Defendants' interests or liens against the Property, and all Defendants should be barred and foreclosed from any equity of redemption, equity lien, or interest in the Property subject to Beneficial's Mortgage, except to the right to redeem from said foreclosure sale as provided by statute. In addition, the Satisfaction filed as Document No. 3649325 on December 4, 2002 is void and of no effect based on the doctrine of failure of consideration, and mistake. Plaintiff's claims for a money judgment are withdrawn without prejudice so that Plaintiff may proceed to foreclose its mortgage by advertisement.

### **ORDER FOR JUDGMENT**

LET JUDGMENT BE ENTERED in favor of Beneficial Loan and Thrift Co. and against Defendants as follows:

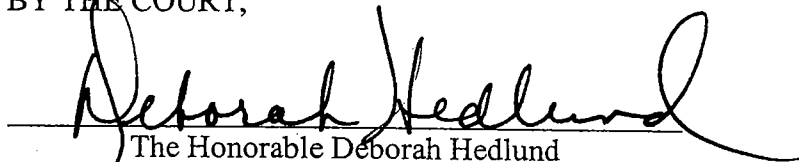
1. That Beneficial's Mortgage is prior, paramount, and superior to all Defendants' interests or liens against the Property, and all Defendants are barred and foreclosed from any equity of redemption, equity lien, or interest in the Property subject to Beneficial's Mortgage except to the right to redeem from said foreclosure sale as provided by statute. That each and every Defendant, are barred and foreclosed from any equity of redemption or interest in the

Property. In addition, the Satisfaction filed as Document No. 3649325 on December 4, 2002, is void and of no effect based on the doctrine of failure of consideration and mistake. Plaintiff's claims for a money judgment are withdrawn without prejudice so that Plaintiff may proceed to foreclose its mortgage by advertisement.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT,

Dated: 1-26, 2003.

  
The Honorable Deborah Hedlund  
Judge of District Court

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

**DISTRICT COURT  
FOURTH JUDICIAL DISTRICT**

Dated: JANUARY 28, 2004

**NOTICE OF ENTRY OF JUDGMENT**

GREGORY MARTIN ERICKSON  
333 SOUTH SEVENTH STREET  
SUITE # 2000  
MINNEAPOLIS MN 55402

**IN RE:**

BENEFICIAL LOAN & THRIFT CO

**vs**

**File Number:** DC CT 03-017734

THE STATE OF MINNESOTA

You are hereby notified that on this date **JUDGMENT** was **ENTERED** in the above-entitled matter.

JUDGMENT ENTRY DATE : JANUARY 28, 2004

Mark S. Thompson  
Judicial District Administrator  
Hennepin County Courts

Judgment Dept.  
(612) 348-3169

J107JL02 (72)  
(06/01/97 OV90)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Christina Marie Roetering and Kevin  
Michael Roetering,  
  
Debtors.

Court File No. BKY-04-43760 RJK  
  
Chapter 7 Case

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY**

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**FACTUAL BACKGROUND**

On or about November 16, 1993, the Debtors entered into a Residential Mortgage (the “Mortgage”) with Beneficial Loan & Thrift Co. (“BLTC”) to secure payment of the Loan Repayment and Security Agreement (the “Note”) of said date. A copy of the Mortgage is attached and incorporated herein as Exhibit A to this Motion. The Mortgage was recorded with the Office of the Registrar of Titles in Hennepin County, Minnesota, as Document No. 2461484 on January 3, 1994. Pursuant to the specific terms and conditions of the Note, the Debtors agreed to make certain monthly payments to Movant BLTC.

An Event of Default has occurred under the terms of the Note and Mortgage in that, among other things, the Debtors have failed to make the payments required under the Note and Mortgage. Prior to the Petition Date, the Debtors failed to make multiple payments under the Note and Mortgage to BLTC. Pursuant to the terms of the Note and Mortgage, upon the occurrence of an Event of Default, Movant BLTC may declare all sums immediately due and payable and may recover from the Debtors all costs and fees incurred by BLTC in exercising its rights and remedies under the Note and Mortgage. As a consequence of the Debtors' default, Movant BLTC has the right to accelerate all sums due thereunder.

As of the Petition Date, the Debtors were delinquent under the Note and Mortgage in the sum of approximately \$2,586.03. As of the date of filing of the petition for relief, the pay-off balance under the Note was \$155,284.72, plus additional interest, attorneys' fees and other costs and charges as of the filing of this case. Since the execution of the Note and Mortgage, the Debtors have consistently been in default under the terms and conditions of the Mortgage. The Debtors' various defaults include, without limitation, allowing for state tax liens to be recorded against the property, and numerous payment defaults throughout the history of the Note and Mortgage. Property and tax records indicate that real property taxes in the approximate amount of \$27,545.25 are currently due and owing on the real property subject to BLTC's Mortgage.

Hennepin County estimates that the estimated market value of the property is \$200,700, which would be subject to Movant BLTC's Mortgage. Movant BLTC has not had the opportunity to inspect the Property recently and does not know whether the Property is currently insured and, if so, for how much. However, Movant BLTC believes that the value of the Property is rapidly depreciating and will be worth substantially less based on the Debtors' continuing lack of upkeep stemming from the Debtors' current financial condition. Movant BLTC's interest in the Property is not adequately protected. Moreover, the Debtors have not made any payments to Movant BLTC since April 23, 2004. A continuing default by the Debtors will impair BLTC's interest without adequate protection or just compensation. Accordingly, BLTC prays for relief so that it may exercise its rights and remedies with respect to the Property subject to its Mortgage.

## **LEGAL ARGUMENT**

### **GOOD CAUSE EXISTS FOR GRANTING BLTC RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11. U.S.C. § 362(d)(1).**

The Bankruptcy Code creates an automatic stay upon the filing of a petition in bankruptcy. 11 U.S.C. § 362(a). Section 362(d) of the Bankruptcy Code provides for the methods of relief from the automatic stay as follows:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as terminating, annulling, modifying, or conditioning such stay-

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
- (2) with respect to a stay of an act against property under subsection (a) of this section, if-
  - (A) the debtor does not have an equity in such property; and
  - (B) such property is not necessary to an effective reorganization. . .

11 U.S.C. § 362(d). Pursuant to 11 U.S.C. § 362(g), the burden is on the Debtor to prove the absence of cause and/or adequate protection.

For the following reasons, "Cause" exists for granting Movant BLTC relief from the automatic stay under Section 362(d)(1):

- (a) The Debtors are in default under the Note and Mortgage.
- (b) As of the Petition date, the outstanding arrearage under the Note totaled approximately \$2,586.03.
- (c) To the extent that any value may be realized for the Debtors' estate, BLTC's knowledge of, and access to, the market for such Property makes it more likely that BLTC, as compared to the Trustee, can obtain the best price for the Property, which could potentially inure to the benefit of the Debtors' estate and the Trustee.



- (d) The Debtors continue to retain and presumably use and benefit from the use of the Property without paying for it. All the while, the Property continues to depreciate in value because of the Debtors' failure to maintain the Property.
- (e) BLTC has no proof that the Property is being properly protected from the elements and the risk of damage or loss.
- (f) BLTC has no proof that the Property is being properly maintained and cared for.
- (g) The Debtors have failed to provide BLTC with adequate protection of the Property under Bankruptcy Code § 361. The Debtors' last payment was received by BLTC on April 23, 2004.
- (h) BLTC believes, and therefore avers, that the Trustee will not want to provide BLTC with adequate protection of the Property under Bankruptcy Code § 361.
- (i) BLTC believes, and therefore avers, that the Trustee will not want to retain the Property by curing all defaults under the Note and Mortgage and reinstating the terms of the Note.

### **BLTC'S INTEREST IN THE PROPERTY IS NOT ADEQUATELY PROTECTED**

A creditor may proceed under Section 362(d)(1) to have the stay lifted when the debtors are not providing adequate protection of the secured creditor's interest. The United States Court of Appeals for the Eighth Circuit has stated that the amount and nature of adequate protection that a secured creditor is entitled to "is a balancing act best left to the discretion of the Bankruptcy Judge . . . ." In re Briggs Transp. Co. 780 F.2d 1339, 1345-49 (8th Cir. 1985).

In the present case, BLTC's interest in the Property is not adequately protected. At the time of the Debtors' bankruptcy filing the Debtors were indebted to BLTC in the approximate amount of \$155,284.72 plus interest, attorneys' fees and other costs and charges (the "Indebtedness"). Fees, costs and charges continue to accrue on account of the Indebtedness under the terms of the Mortgage and Note, and as provided in 11 U.S.C. § 506(b). The Debtors have failed to make payments due under the Mortgage and Note since April 23, 2004. Moreover, the debtors have not made any offer of adequate protection to BLTC. Accordingly, BLTC's interest in the Property is not adequately protected and BLTC is entitled to relief from the automatic stay under Section 362(d)(1).

#### **Little Equity and Not Necessary for Effective Reorganization**

A creditor may also proceed to have the automatic stay lifted, pursuant to 11 U.S.C. § 362(d)(2), by showing that a debtor does not have any equity in collateral, and that the collateral is not necessary for the debtor's reorganization. In the present case, as set forth above, at the time of the Debtors' bankruptcy filing, the Debtors were indebted to BLTC in the approximate amount of \$155,284.72 plus interest, attorneys' fees and other costs and charges. Since the bankruptcy filing, interest, fees and other costs and charges have continued to accrue as provided under the Note and Mortgage and pursuant to Section 506(b). The Debtors have little equity in the Property.

Where the debtor has no equity in the collateral, the only remaining question under a Section 362(d)(2) analysis is whether the property is necessary for the debtor's reorganization. In re Marion Street Partnership, 108 B.R. 218, 225 (Bankr. D. Minn. 1989). Inasmuch as this case is a Chapter 7 case, the Property is not necessary for a reorganization and Movant BLTC is entitled to relief from the automatic stay under Section 362(d)(2).

## **CONCLUSION**

BLTC has demonstrated that it is entitled to relief from the automatic stay because its interest in the Property is not adequately protected, the Debtors have little equity in the Property and the Property is not necessary for the Debtors' reorganization. Thus, under either Section 362(d)(1) or (2), BLTC is entitled to the relief requested in the Motion, namely that the Court modify the automatic stay to allow BLTC to exercise its rights and remedies with respect to the Property and grant Movant BLTC such other and further relief as is just and equitable.

RIDER BENNETT, LLP

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Minneapolis, Minnesota 55402  
(612) 340 – 8900

DATED: October 1, 2004

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Christina Marie Roetering and Kevin  
Michael Roetering,

Court File No. BKY-04-43760 RJK

Chapter 7 Case

Debtors.

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**UNSWORN CERTIFICATE OF SERVICE**

I, Tammy J. Estrem, declare under penalty of perjury that on October 4, 2004, I mailed copies of the foregoing **Notice of Hearing & Verified Motion For Relief From The Automatic Stay, Memorandum of Law In Support of Motion For Relief From The Automatic Stay, and Order Granting Relief From Automatic Stay** by first class mail, postage prepaid, to each entity below at the address stated below for each entity:

Kevin Michael Roetering  
Christina Marie Roetering  
6628 Cardinal Cir.  
Maple Grove, MN 55369

Randall L. Seaver  
12400 Portland Ave. S., Ste. 132  
Burnsville, MN 55337

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
**(612)-664-5516**

RIDER BENNETT, LLP

By /e/ Tammy Estrem-Cordes  
Tammy Estrem-Cordes  
Legal Administrative Assistant  
333 South Seventh Street, Suite 2000  
Minneapolis, MN 55402  
(612) 335-3853

Dated: October 4, 2004

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Christina Marie Roetering and Kevin  
Michael Roetering,  
  
Debtors.

Court File No. BKY-04-43760 RJK  
  
Chapter 7 Case

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**ORDER GRANTING RELIEF FROM AUTOMATIC STAY**

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This matter came before the Court on October 28, 2004 at 2:00 p.m., upon the motion of Beneficial Loan & Thrift Co. ("BLTC") for relief from the automatic stay imposed by 11 U.S.C. § 362(a). Appearances, if any, were noted on the record.

Based upon the pleadings, arguments of counsel, and the record and file herein,

**IT IS HEREBY ORDERED:**

1. BLTC shall be granted immediate relief from the automatic stay imposed pursuant to 11 U.S.C. § 362(a) with respect to the following real property in which BLTC holds a Mortgage:

REAL PROPERTY IN HENNEPIN COUNTY, MINNESOTA, DESCRIBED  
AS FOLLOWS:

LOT 4, BLOCK 1, MAPLE MEADOWS 10<sup>TH</sup> ADDITION.

TORRENS CERTIFICATE NUMBER 733922. TAX MAP OR PARCEL ID  
NO.: 35-119-22-23-0067.

(the "Property").

2. BLTC may proceed to exercise its rights and remedies in the Property available under applicable non-bankruptcy law.

3. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_, 2004.

BY THE COURT:

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Judge Robert J. Kressel  
United States Bankruptcy Judge